Supreme Court, U.S.
FILED

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No. _____

In The

Supreme Court of the United States

JANET LaMONTAGNE,

Petitioner,

vs.

ST. LOUIS DEVELOPMENT CORPORATION and THE CITY OF ST. LOUIS, MISSOURI,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

May a governmental entity retroactively and without reason fire a patronage employee for being a party committeewoman, which was previously permitted, with the intent to terminate her solely for her participation in the previously permitted political activity and speech.

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CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS

The decision of the District Court, dated August 5, 1998, is unreported. A copy of the decision is attached as Page A-21 of the Appendix. The decision of the United States Court of Appeals for the Eighth Circuit is reported as *LaMontagne vs. St. Louis Dev. Corp.*, 172 F.3d 555 (8th Cir., 1999). That decision is also set out at Page A-1 of the Appendix. The Order Denying Petition for Rehearing and for Rehearing En Banc, dated April 29, 1999, is not reported and appears in the Appendix at page A-26.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1). The opinion of the Court of Appeals for the Eighth Circuit was entered on March 30, 1999 (Appendix, Page A-1) and the Order Denying Petition for Rehearing En Banc was entered on April 29, 1999 (Appendix, Page A-26). This Petition is timely under the provisions of Supreme Court Rule 13(1) and (3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the Constitution of the United States:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people

> peaceably to assemble, and to petition the Government for a redress of grievances.

Fourteenth Amendment to the Constitution of the United States:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. §1983:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

28 U.S.C. §1254(1):

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

STATEMENT OF THE CASE

This action was originally filed by Janet LaMontagne in the United States District Court for the Eastern District of Missouri on January 6, 1998. (Appendix, Page A-9.) The Complaint alleged that the St. Louis Development Corporation and the City of St. Louis, and their officers, agents, representatives, and employees violated the First and Fourteenth Amendment rights of Petitioner, Janet LaMontagne, by demanding that she resign her position as 14th Ward Democratic Committeewoman for the City of St. Louis or be terminated from her position as a patronage employee of the Mayor's Business Assistance Center, a part of the City of St. Louis government.

The record in this case is scant. The District Court and Court of Appeals had only Ms. LaMontagne's Complaint before it. There was no evidentiary proceeding at any time. However, this Court has held that there is no "heightened pleading standard" for municipal liability under §1983. *Leatherman vs. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 168, 122 L.Ed.2d 517, 524 (1993).

For a number of years prior to 1988, Ms. LaMontagne had been the elected Democratic Committeewoman of the 14th Ward in the City of St. Louis, Missouri. (For purposes of ease, the City of St. Louis will hereafter be referred to as the "City".) During that same time, she had been a patronage employee of the Mayor's Business Assistance Center, hired by the then Mayor of the City of St. Louis, Mayor Vincent Schoemehl. She remained a patronage employee in that same position until she was terminated in October 1997 for her refusal to resign her position as 14th Ward Committeewoman.

The source of the funds for Petitioner's position changed from time to time. Originally the funding came from the budget of the City's Building Commissioner's office. Later, the funds came from the St. Louis Port Authority. At some time between July 27, 1988 and January 1, 1997, the funding for Ms. LaMontagne's position was funneled through the St. Louis Development Corporation, an agency of the City. (For ease of discussion, the St. Louis Development Corporation will hereafter be referred to as the "SLDC".) During all of this time, it was permitted that employees of the Mayor's Business Assistance Center could participate in political activities, including running for and holding a partisan political party office.

Sometime prior to January 1, 1997, the exact date does not appear in the record, the SLDC adopted a rule that prohibited employees, whose salary was funded through the SLDC, from seeking or holding an office in any political party. The same rule, however, permitted the Executive Director and three additional SLDC employees, to be designated by the Executive Director, to engage in

partisan political campaigns and activities. There was no suggestion that Ms. LaMontagne's political activity interfered with her job performance or that her employment service was in any way unsatisfactory. There is no history or explanation as to the reasons for or background for the new rule. It appears to have been a purely arbitrary decision.

Ms. LaMontagne filed her Complaint alleging that her termination, for refusal to resign her party position, violated her rights under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983.

On or about the 30th day of March, 1998, Defendants filed their joint Motion for Judgment on the Pleadings and Memorandum in Support Thereof. (Appendix, Page A-16.) Subsequently, on the 5th day of August, 1998, the Honorable Jean C. Hamilton, United States District Judge, entered her Judgment, Memorandum and Order granting Defendants' joint Motion for Judgment on the Pleadings and dismissing Plaintiff's Complaint with prejudice. (Appendix, Page A-21.) On August 13, 1998, Ms. LaMontagne filed her Notice of Appeal to the United States Court of Appeals for the Eighth Circuit from the final judgment entered by the United States District Court.

Oral arguments were heard by the United States Court of Appeals on the 12th day February, 1999, and on March 30, 1999, the Panel entered its order affirming the decision of the District Court. (Appendix, Page A-1.) The Panel concluded that in cases of the firing of a patronage employee, it is not necessary to look at the reason for or the reasonableness of the firing. It is only necessary to

look to see if the government entity had the legal authority to adopt a rule pertaining to personnel matters.

On the 12th day of April, 1999, Ms. LaMontagne, filed her Petition for Rehearing En Banc. On the 29th day of April, 1999, the United States Court of Appeals entered its Order Denying Petition for Rehearing and for Rehearing En Banc. (Appendix, Page A-26.)

REASONS FOR GRANTING THE WRIT

PATRONAGE EMPLOYEES MAY NOT BE FIRED FOR EXERCISING THEIR CONSTITUTIONAL RIGHTS

Patronage in government employment is not a new phenomenon. On its face, patronage is not an unconstitutional institution. *Elrod vs. Burns*, 427 U.S. 347, 353-356, 49 L.Ed.2d 547, 553-555 (1976). However, this Court has clearly stated that a patronage employee's constitutional rights to political association and speech cannot be infringed upon by termination of their employment. With a few exceptions, a patronage employee cannot be fired because of his or her political affiliation or activity. *Elrod*, 427 U.S. at 372-373, 49 L.Ed.2d at 565; *Branti vs. Finkel*, 445 U.S. 507, 516-518, 63 L.Ed.2d 574, 582-583 (1980). Patronage dismissals are limited to certain policy-making positions. (*Elrod*, 427 U.S. at 373, 49 L.Ed.2d at 565.) The Sixth Circuit Court of Appeals has also pointed out that this ban on patronage firings applies to intra-party as well as inter-party firings. *Smith vs. Sushka*, 117 F.3d 965, 970 (6th Cir., 1997).

The several Circuit Courts have consistently abided by these decisions. *Roldan-Plumey vs. Cerezo-Suarez*, 115

F.3d 58, 61 (1st Cir., 1997); *Danahy vs. Buscaglia*, 134 F.3d 1185, 1189 (2nd Cir., 1998); *Carver vs. Foerster*, 102 F.3d 96, 104 (3rd Cir., 1996); *McConnell vs. Adams*, 829 F.2d 1319, 1323 (4th Cir., 1987); *Brady vs. Fort Bend County*, 145 F.3d 691, 702 (5th Cir., 1998); *Smith vs. Sushka*, 117 F.3d 965, 970 (6th Cir., 1997); and *Flenner vs. Sheahan*, 107 F.3d 459, 462 (7th Cir., 1997).

The Eighth Circuit similarly and previously followed the dictates of the Supreme Court. In *Barnes vs. Bosley*, 745 F.2d 501 (8th Cir. 1984), the Court recognized that:

> . . . the Supreme Court struck the balance between the government's interest in efficient management and the public employee's interest in free political association. The Court held that political affiliation is always protected unless the employee occupies a position that requires a political viewpoint which is in harmony with the viewpoint of his or her supervisor.

Barnes at page 506.

NEW TEST FOR PATRONAGE EMPLOYEES

The decision of the Eighth Circuit creates a "loop-hole" for government officials to avoid the restrictions on terminating patronage employees as set out in *Elrod vs. Burns*, 427 U.S. 347, 49 L.Ed.2d 547 (1976) and *Branti vs. Finkel*, 445 U.S. 507, 63 L.Ed.2d 574 (1980). The Circuit Court's decision would allow a newly elected or any other official to adopt a retroactive ban on political party membership or office holding, and would permit such an

official to fire a patronage employee for having previously violated the new rule. Under the Circuit Court's decision, since the official had the legal authority to adopt employment rules, the courts would be barred from looking at the reason or effect of the rule. Once the former employees are terminated, the official could repeal the rule and hire employees of the official's political persuasion. This clearly violates both the letter and spirit of *Elrod* and *Branti*.

In the instant case, the Eighth Circuit Court of Appeals stated that the question of whether a patronage employee may be retroactively precluded from continuing to hold an elected party office is a question of first impression. The Eighth Circuit Court of Appeals asserted that:

> . . . The case law is silent on the question of whether a court must have evidence of a government entity's actual reasons for restricting the political activity of its employees in order to balance the government's interest against that of the employee.
>
> Our examination of equal protection cases leads us to believe that an evidentiary hearing is not required to determine whether a particular ordinance is a rational method of serving a legitimate goal.
>
> . . . a court deciding the constitutionality of a government restriction on the partisan political conduct of its employees need consider only whether legitimate government interests are at stake; evidence of the government's actual reasons for imposing the restriction is not required.

LaMontagne vs. St. Louis Dev. Corp., 172 F.3d 555, 558 (8th Cir., 1999.)

The Eighth Circuit Court of Appeals concluded that a court, reviewing the constitutionality of an attempted curtailment on the political activities of patronage employees, need not look at the reasonableness of the restriction. The Eighth Circuit's decision, however, did not enunciate or examine the particular "legitimate government interest" which was "at stake" in this case. Nowhere in the Circuit Court's decision is there any mention of what "legitimate government interest" might be served by retroactively prohibiting Ms. LaMontagne from continuing to serve in her political party capacity. The Court of Appeals concluded that since the City of St. Louis and the St. Louis Development Corporation had the legal authority to adopt employee regulations, they had the constitutional authority to retroactively prohibit her continued holding of a political office.

BALANCING TEST

The "balancing test," weighing the government's interest in restricting a patronage employee's political activities against the patronage employee's constitutional rights has been the method by which our federal courts have determined the constitutional validity of the government restrictions. This "balancing test" was specifically described in *Pickering vs. Board of Educ.*, 391 U.S. 563, 568-569, 20 L.Ed.2d 811, 817-818 (1968). See also, *Connick vs. Myers*, 461 U.S. 138, 156-157, 75 L.Ed.2d 708, 726 (1983). Paraphrasing Mr. Justice Marshall, the test

requires a "balance between the interest of Ms. LaMontagne, as a citizen, in participating in the political process, and the interest of the City, as an employer, in promoting the efficiency of the public services it performs through its employees." *Pickering*, 391 U.S. at 568, 20 L.Ed.2d at 817.

The Panel's decision in this case obliterates the use of any "balancing test."

INAPPROPRIATE AUTHORITY CITED

The cases cited in the Eighth Circuit to support its conclusion misconstrued the issue in this case. The instant case deals with the employment of a patronage employee of the government entity being terminated from her employment solely because of her past political activity. None of the 8th Circuit opinions cited by the Panel dealt with First Amendment issues. *Bannum, Inc. vs. City of St. Charles*, 2 F.3d 267 (8th Cir., 1993) dealt with a private business challenging a municipal zoning ordinance as violating its equal protection rights. *McDonald vs. Board of Election Commissioners*, 394 U.S. 802, 22 L.Ed.2d 739 (1969) dealt with an equal protection claim based on the refusal of the local election board to provide absentee ballots to inmates of a local jail. *Stiles vs. Blunt*, 912 F.2d 260 (8th Cir., 1990) dealt with an individual who claimed that the refusal to accept his candidacy papers for State Representative violated his equal protection rights even though he did not meet the State minimum age requirement to run for the office. The sole case cited from another circuit, *Zielasko vs. State of Ohio*, 873 F.2d 957

(6th Cir., 1989), dealt with an equal protection challenge to the Ohio Constitutional ban on candidates for judicial office who were over 70 years of age. Judge Nathaniel Jones, in his dissent, would have reversed the case on First Amendment grounds. The Sixth Circuit itself has limited the application of the *Zielasko* case (*Children's Healthcare vs. Deters*, 92 F.3d 1412, 1416 (6th Cir., 1996)) and the Fourth Circuit has similarly distinguished the use of *Zielasko* (*Silverman vs. Ellisor*, 940 F.2d 653, page 6 of Table, (4th Cir., 1991)). None of the cases relied on by the Panel dealt with a patronage employee being fired because of the creation of a rule which retroactively disqualified the patronage employee from employment.

CONCLUSION

If an Eighth Circuit opinion is going to reverse previous standards established by the Supreme Court and the various Circuit Courts of Appeal, then the decision should be reviewed by this Court.

For all of these reasons, it is respectfully urged upon this Court that the Writ of Certiorari be granted and that the Court take jurisdiction to hear the appeal.

Respectfully submitted,

THE SESTRIC LAW FIRM

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APPENDIX

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 98-3156

Janet LaMontagne, Appellant, v. St. Louis Development Corporation, A Missouri Not-for-Profit Corporation, and City of St. Louis, A Municipal Corporation, Appellees.	* * * * * * * * * * * * *	Appeal from the United States District Court for the Eastern District of Missouri.

Submitted: February 12, 1999

Filed: March 30, 1999

Before WOLLMAN, LOKEN, and MORRIS SHEPPARD ARNOLD, Circuit Judges.

MORRIS SHEPPARD ARNOLD, Circuit Judge.

Janet LaMontagne was an employee of the St. Louis Development Corporation (SLDC) and an elected Democratic committeewoman for her ward in St. Louis, Missouri. The SLDC, a not-for-profit corporation controlled

by the City of St. Louis, adopted a rule prohibiting its employees from seeking or holding office in a political party. When Ms. LaMontagne refused to resign her position as committeewoman, the SLDC terminated her employment. Ms. LaMontagne sued under 42 U.S.C. § 1983, alleging that the SLDC and the City of St. Louis had violated her rights under the first and fourteenth amendments. The district court[1] granted judgment on the pleadings to the defendants. Ms. LaMontagne appeals; we affirm.

I.

We review *de novo* the district court's decision to grant judgment on the pleadings, accepting as true all facts pleaded by Ms. LaMontagne and drawing all reasonable inferences in her favor. *Franklin High Yield Tax-Free Income Fund v. County of Martin*, 152 F.3d 736, 738 (8th Cir. 1998). Since the SLDC regulation itself is not in evidence, we assume for present purposes that it prohibits employees of the SLDC from seeking or accepting nomination, election, or appointment as an officer of a political party, which is how the complaint describes it.

Ms. LaMontagne contends that this restriction violates her first amendment rights of freedom of speech and freedom of assembly. As we have observed on more than one occasion, "[r]egulations limiting even those rights guaranteed by the explicit language of the Bill of Rights are reviewed more deferentially when applied to certain

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[1] The Honorable Jean C. Hamilton, Chief United States District Judge for the Eastern District of Missouri.

public employees than when applied to ordinary citizens." *Crain v. Board of Police Commissioners*, 920 F.2d 1402, 1408 (8th Cir. 1990); *see also Reeder v. Kansas City Board of Police Commissioners*, 733 F.2d 543, 547 (8th Cir. 1984), as well as *CSC v. National Association of Letter Carriers*, 413 U.S. 548, 567 (1973). In reviewing such regulations, we balance the employee's interest in commenting upon matters of public concern against the government's interest in limiting certain types of political activity. *See, e.g., National Association*, 413 U.S. at 564, and *Pickering v. Board of Education*, 391 U.S. 563, 568 (1968).

The Supreme Court has examined state and federal restrictions analogous to the one that the SLDC imposes and has held that they do not amount to unconstitutional infringements on free speech because they serve legitimate government interests. *See, e.g., United Public Workers v. Mitchell*, 330 U.S. 75, 101 (1947) (holding that Congress could constitutionally prohibit partisan political activities by federal employees since it could reasonably believe that such activities fostered the creation of political machines); *National Association*, 413 U.S. at 556, 564-66 (reaffirming the holding in *United Public Workers* and suggesting that restrictions might also promote the impartial execution of the laws and protect employees themselves from political pressure); and *Broadrick v. Oklahoma*, 413 U.S. 601, 602, 618 (1973) (upholding an Oklahoma statute that restricted the political activities of classified civil servants).

Federal appeals courts have interpreted *National Association* and *Broadrick* to mean that state and city governments may restrict the participation of their

employees in a range of political activity. *See, e.g., McCormick v. Edwards,* 646 F.2d 173, 179 (5th Cir. 1981), *cert. denied,* 454 U.S. 1017 (1981) (not unconstitutional for a state to dismiss a non-civil service employee for engaging in political activities prohibited for civil service employees), and *Magill v. Lynch,* 560 F.2d 22, 29 (1st Cir. 1977), *cert. denied,* 434 U.S. 1063 (1978) (upholding a city charter provision barring city employees from being candidates in even nonpartisan city elections). We have held that the St. Louis Police Department may prohibit its employees from running for public office without violating the officers' first amendment rights of free speech and association. *See Otten v. Schicker,* 655 F.2d 142, 144-45 (8th Cir. 1981).

We believe, therefore, that the SLDC's prohibition against serving as an officer of a political party falls squarely within the range of activity that government may reasonably restrict. In fact, one of the plaintiffs in *United Public Workers,* 330 U.S. at 94, like Ms. LaMontagne, was a ward committeeman of a political party, and the Oklahoma statute at issue in *Broadrick,* 413 U.S. at 606, provided in part that no employee "shall be a member of any national, state or local committee of a political party."

II.

Ms. LaMontagne argues that it is the SLDC's burden to demonstrate that its legitimate interest in restricting her political activity outweighs her own interest in commenting on matters of common concern. In other words, she suggests that the court must examine the history behind and the reasons for this particular regulation and

may not rely merely on precedent to conclude that legitimate government interests are at stake in this case. The case law is silent on the question of whether a court must have evidence of a government entity's actual reasons for restricting the political activity of its employees in order to balance the government's interest against that of the employee. We therefore look to the standard of review for the most closely analogous genre of cases, namely, the rational-relationship standard used to decide whether government policy violates the equal protection clause of the fourteenth amendment.

Our examination of equal protection cases leads us to believe that an evidentiary hearing is not required to determine whether a particular ordinance is a rational method of serving a legitimate goal. *See, e.g., Bannum, Inc. v. City of St. Charles*, 2 F.3d 267, 272 (8th Cir. 1993). *See also McDonald v. Board of Election Commissioners*, 394 U.S. 802, 809, (1969) ("statutory classifications will be set aside only if no grounds can be conceived to justify them"); *Stiles v. Blunt*, 912 F.2d 260, 267 (8th Cir. 1990), *cert. denied*, 499 U.S. 919 (1991) ("whether or not these reasons were actually considered in enacting the minimum age requirement is irrelevant"); and *Zielasko v. State of Ohio*, 873 F.2d 957, 962 (6th Cir. 1989) ("[t]hat these reasons at least arguably provide a rational basis for the mandatory retirement of judges is sufficient for section 6(C) to survive under the constitutional standard we have described").

These cases suggest to us that a court deciding the constitutionality of a government restriction on the partisan political conduct of its employees need consider only

whether legitimate government interests are at stake; evidence of the government's actual reasons for imposing the restriction is not required. In fact, our decision in *Otten*, 655 F.2d at 144, was evidently based not on evidence of the St. Louis Police Department's reason for limiting political activity, but on the general principle that the department "may determine that political restrictions of the kind involved in this case serve several valid and important state interests." *See also National Association*, 413 U.S. at 564-67.

As evidence that the prohibition on seeking and holding office is arbitrary and therefore not legitimate, Ms. LaMontagne points to the fact that some SLDC employees are permitted to engage in political activity. Under the SLDC rule, the executive director and three additional employees whom he or she designates are permitted to engage in partisan political campaigns but remain subject to the prohibition against holding party office. Ms. LaMontagne argues that no reasonable government interest can be served by a regulation that prohibits all employees from serving as party committeepersons while allowing some employees to engage in partisan political campaigns. But the alleged inconsistencies between the prohibitions on her political activities and the regulations pertaining to other employees are not constitutionally relevant, except insofar as they might raise equal protection issues. Since Ms. LaMontagne has not made an equal protection claim, this argument fails.

Ms. LaMontagne further argues that restrictions on civil service employees are the only ones that have been held to be constitutional and that the record does not indicate that she is a civil service employee. We see

nothing in the language or logic of the relevant cases that would limit their holdings to a particular class of government employees. The federal statutes that are presently in effect, moreover, prohibit political activities by "an employee . . . employed or holding office in the Government of the United States or any agency or instrumentality thereof," *see* 5 U.S.C. § 7324(a)(2), and by state and city employees "whose principal employment is in connection with an activity . . . financed . . . by loans or grants made by the United States," *see* 5 U.S.C. § 1501(4). Although the Oklahoma statute at issue in Broadrick applied to classified civil servants and *Otten* dealt with police department regulations, the type of employee concerned was not a consideration in either decision, nor do the relevant statutes in effect at present distinguish between classes of employees, *see* 5 U.S.C. § 1501(4), § 1502(a). Ms. LaMontagne's employment status is therefore of no moment in the present context.

Finally, Ms. LaMontagne attempts to distinguish her case from *Otten* on the ground that the St. Louis Board of Police Commissioners was authorized to adopt regulations governing the appointment and employment of police officers, whereas there is no evidence that the SLDC has similar powers. For the purposes of this opinion, we accept her characterization of the SLDC as an agency of the City of St. Louis, and thus a government entity. Ms. LaMontagne does not point to any authority, however, that would suggest that some government entities lack the authority to restrict the political activities of their employees. We therefore reject her proposed distinction.

III.

For the above reasons, we hold that the SLDC's restriction on Ms. LaMontagne's political activity as described in her complaint does not violate her rights under the first amendment, and, accordingly, we affirm the judgment of the district court.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JANET LaMONTAGNE, **Plaintiff,**	
vs.	**Cause No. 4:98CV00016GF**
ST. LOUIS DEVELOPMENT CORP., A MISSOURI NOT-FOR-PROFIT CORPORATION,	**JURY TRIAL REQUESTED**
Serve: Mauren McAvoy **Executive Director** **Suite 1200** **1015 Locust Street** **St. Louis, MO 63101**	
and	
THE CITY OF ST. LOUIS, MISSOURI, A MUNICIPAL CORPORATION	
Serve: Hon. Clarence Harmon **Mayor, City of St. Louis** **Room 200, City Hall** **1200 Market Street** **St. Louis, MO 63103**	
Defendants.	

COMPLAINT

(Filed Jan 6, 1998)

Comes now the Plaintiff, and for her cause of action against the Defendants states as follows:

JURISDICTION AND VENUE

1. Plaintiff, Janet LaMontagne, is a citizen of the United States and of the State of Missouri. She is a resident of the City of St. Louis, in the Eastern District of Missouri.

2. Defendant, St. Louis Development Corporation, is a Missouri not-for-profit corporation with its principal and only place of business within the City of St. Louis, which is located within the Eastern District of Missouri.

3. Defendant, City of St. Louis, Missouri is a municipal corporation duly organized and existing under the Constitution and laws of the State of Missouri, and is located within the Eastern District of Missouri.

4. This action is brought under the provisions of 42 U.S.C. § 1983 to remedy the deprivation of rights guaranteed to the Plaintiff by the 1st and 14th Amendments of the United States Constitution.

5. This Court has jurisdiction of this matter under the provisions of 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3).

6. All of the Defendants are residents of the State of Missouri and reside within the boundaries of the Eastern District of Missouri, Eastern Division. Therefore under the provisions of 28 U.S.C. § 1391(b)(1), venue is proper in this Court.

FACTS

7. Plaintiff, at all times material herein, was a duly elected Democratic committeewoman of the 14th Ward in the City of St. Louis.

8. Prior to July 27, 1988, Plaintiff was an employee of an agency or department of the City of St. Louis, known and designated as the "Business Assistance Center," which had been established by and whose employees were designated by the Mayor of the City of St. Louis. As such, Plaintiff was entitled to and not prohibited from her employment in the office of the Mayor's Business Assistance Center contemporaneously with being the duly elected Democratic committeewoman of the 14th Ward.

9. On or about July 27, 1988, Defendant St. Louis Development Corporation was incorporated, with the original name of "Economic Development Corporation of the City of St. Louis," and its sole and exclusive purpose and function was to provide services to and for Defendant, City of St. Louis.

10. From and after its original incorporation, and at all times material herein, the officers and board of directors of the Defendant, St. Louis Development Corporation consisted of specified elected or appointed officials of Defendant, City of St. Louis, and Defendant, City of St. Louis, controlled, funded, conducted and operated various functions, responsibilities and duties of Defendant City of St. Louis by and through Defendant St. Louis Development Corporation.

11. From and after June 10, 1996, the Executive Director of the Defendant, St. Louis Development Corporation, served as a member of the Cabinet of the Mayor of Defendant, City of St. Louis. Defendant, St. Louis Development Corporation controlled and supervised the activities of certain other agencies of Defendant, City of St. Louis.

12. At all times material herein, Defendant, St. Louis Development Corporation, was acting as and was an agent or agency of Defendant, City of St. Louis.

13. At some point subsequent to July 27, 1988, Defendant, St. Louis Development Corporation, undertook to pay and compensate Plaintiff for her services as an employee of the Mayor's Business Assistance Center, and treated Plaintiff as an employee of Defendant, St. Louis Development Corporation.

14. At some point subsequent to July 27, 1988 but prior to January 1, 1997, Defendant, St. Louis Development Corporation, adopted a rule or regulation that persons compensated by the Defendant St. Louis Development Corporation could not seek or accept a nomination, election or appointment as an officer of a political party. Within the same rule or regulation, Defendant, St. Louis Development Corporation, provided that the Executive Director of Defendant, St. Louis Development Corporation, and three (3) other employees, designated by the Executive Director, could take an active part in partisan political campaigns and politics.

15. Prior to and subsequent to the adoption of said rule or regulation, Plaintiff was and still is a Democratic

committeewoman of the 14th Ward in the City of St. Louis.

16. On or about October 16, 1997, Defendant, St. Louis Development Corporation, through its agents, representatives and employees, advised the Plaintiff that unless she resigned her office as 14th Ward Democratic committeewoman, she would be terminated as an employee of the St. Louis Development Corporation, and that her status as an employee of the Mayor's Business Assistance Center would be terminated.

17. Plaintiff did not and has not resigned her office as the 14th Ward Democratic committeewoman, and subsequent to October 16, 1997, her employment in and at the Mayor's Business Assistance Center was terminated by the Defendant, St. Louis Development Corporation.

18. The actions of Defendant, St. Louis Development Corporation, described in paragraphs 14 through 17 above, represented the official policy of St. Louis Development Corporation as such policy was dictated and established by officers, employees and representatives of Defendant, City of St. Louis.

19. As a direct and proximate result of the actions of the Defendants described above, Plaintiff has been and will be damaged in the amount of One Hundred Thousand and No/100 Dollars ($100,000.00) as follows:

a. Fifty Thousand and No/100 Dollars ($50,000.00) in lost wages and compensation,

b. Twenty-Five Thousand and No/100 Dollars ($25,000.00) as a result of lost vacation time,

c. Twenty-Five Thousand and No/100 Dollars ($25,000.00) as a result of loss of fringe benefits, including but not limited to, health insurance, and retirement benefits . . .

20. The actions of Defendant, St. Louis Development Corporation, are directed and controlled by Defendant, the City of St. Louis, Missouri, were performed with an evil motive and with the intent to injure Plaintiff, entitling Plaintiff to receive punitive damages in the amount of One Million and No/100 Dollars ($1,000,000.00) against the Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief against the Defendants to-wit:

A. Judgment in favor of the Plaintiff and against the Defendants in the amount of One Hundred Thousand and No/100 Dollars ($100,000.00) as compensatory damages and,

B. Judgment in favor of the plaintiff and against the Defendants in the amount of One Million and No/100 ($1,000,000.00) for punitive damages and,

C. Preliminary and permanent injunction enjoining the Defendants from further enforcing its personnel policy and from otherwise discriminating against the Plaintiff,

D. Preliminary and permanent injunction prohibiting the Defendants from terminating the employment of the Plaintiff as an

employee of the Mayor's Business Assistance Council,

E. Declaratory judgment that the personnel policies of the St. Louis Business Corporation are unconstitutional, null and void and have no effect and,

F. Judgment for Plaintiff and against the Defendants for Plaintiff's reasonable attorney's fees and costs in this action,

G. And for such other orders and relief as to this Court seem meek, just and appropriate.

THE SESTRIC LAW FIRM

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JANET LaMONTAGNE, Plaintiff, vs ST. LOUIS DEVELOPMENT CORP., A Missouri Not-For-Profit Corporation, and CITY OF ST. LOUIS, MISSOURI, A Municipal Corporation, Defendants.	)	No. 4:98CV00016GFG

DEFENDANT CITY OF ST. LOUIS' MOTION FOR JUDGMENT ON THE PLEADINGS IN CONCURRENCE AND JOINED WITH DEFENDANT ST. LOUIS DEVELOPMENT CORPORATION'S MOTION FOR JUDGMENT ON THE PLEADINGS AND MEMORANDUM IN SUPPORT THEREOF

COMES NOW Defendant, City of St. Louis, Missouri, by and through said Defendant's Attorney, Carl W. Yates III, Assistant City Counselor, and for Defendant City of St. Louis' Motion for Judgment on the Pleadings states as follows:

1. Plaintiff has filed a Complaint alleging that her employment with Defendant St. Louis Development Corporation (herein after SLDC) was terminated pursuant to a SLDC rule or regulation that SLDC employees may not

seek or accept nomination, election or appointment as an officer of a political party. Complaint ¶¶ 14-17.

2. At all times relevant hereto, including the date of her alleged termination, Plaintiff claims to have been a Democratic committeewoman of the 14th Ward in the City of St. Louis. Complaint ¶ 15.

3. Plaintiff asserts that she was offered a choice of resigning her post as committeewoman or termination of her employment at SLDC. Complaint ¶ 16. Plaintiff allegedly refused to resign as committeewoman and her employment at SLDC was apparently terminated. Complaint ¶ 17.

4. Plaintiff alleges that the termination of her employment at SLDC violated unspecified rights guaranteed to her under the First and Fourteenth Amendments to the United States Constitution. Complaint ¶ 4.

5. Plaintiff seeks recovery under 42 U.S.C. § 1983, which provides redress for deprivation of Civil Rights by persons acting under color of state law. Complaint ¶ 4.

6. Plaintiff seeks, *inter alia,* $100,000.00 in compensatory damages, and a declaration that SLDC's personnel policy is unconstitutional, null, and void. Complaint ¶ 5.

7. Even assuming all of Plaintiff's allegations are true, the Complaint fails as a matter of law to state a claim upon which relief can be granted against The City of St. Louis because it is well-established that governmental entities may prohibit their employees from holding public office without infringing their constitutional rights.

8. Defendant previously filed Motions to Strike Punitive Damages and Dismiss The City of St. Louis as a Defendant. While the Court is yet to rule on the aforementioned motions, Defendant hereby renews those motions and incorporates said motions, memoranda, and arguments into the present motion as though fully set forth herein as a matter of procedure and argument.

9. Defendant City of St. Louis, with consent of Defendant SLDC, hereby adopts Defendant SLDC's Motion for Judgment on the Pleadings as its own.

10. Defendant City of St. Louis, with consent of Defendant SLDC, hereby adopts Defendant SLDC's Memorandum in Support of Defendant SLDC's Motion for Judgment on the Pleadings as its own including all attachments, exhibits, Charter Provisions and other supporting documentation.

11. Defendant City of St. Louis joins in and incorporates by reference into the present motion, as though fully set forth herein, Defendant SLDC's Motion and Memorandum for Judgment on the Pleadings, and as such will file no further Memoranda in support of the present Motion.

12. Further, Defendant City of St. Louis states that nothing in this Motion or the adopted Memorandum in Support thereof constitutes an admission of the truth of any fact alleged by Plaintiff and is used solely for the purposes of this present Motion.[1]

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[1] Defendant City of St. Louis contends, as it did in its Motion to Dismiss, that at no time was the Plaintiff an employee

WHEREFORE, Defendant prays that this Honorable Court, for the reasons stated above and as set forth in the Pending Motions by all Defendants, dismiss the above-styled cause of action, deny the relief requested by Plaintiff in her Complaint, award Defendant its attorney's fees and costs incurred herein, and for any other further relief, Judgments, Orders, and Decree as the Court deems just and proper in the premises.

Respectfully submitted,
ERIC KENDALL BANKS,
City Counselor

By /s/ Carl W. Yates III
Carl W. Yates III #72485
Assistant City Counselor
Attorney for Defendant
City of St. Louis, Missouri
City Hall-1200 Market,
Room 314
St. Louis, MO 63103
(314) 622-3361

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of said Defendant, City of St. Louis. And furthermore, at no time did Defendant City of St. Louis exercise any control over the Plaintiff, nor did it exercise any control over the Defendant SLDC as to its hiring, firing, discipline or employment practices, procedures, or policies, or any other matter, all of which were under the exclusive control of the SLDC which is a not-for-profit Corporation organized under the Laws of the State of Missouri, and independent of Defendant City of St. Louis, Missouri, which itself is a Municipal Corporation organized under the constitution and Law of the State of Missouri, separate and distinct from the SLDC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed via regular U.S. Mail, First Class, Postage prepaid, this 30th day of March, 1998, to: Anthony J. Sestric, Suite 401, 801 North Second Street, St. Louis, Missouri 63102-2560; and to Michael A. Garvin, Carnahan & Garvin, L.L.C. 100 South Fourth Street, Suite 500, St. Louis, MO 63102, Attorneys for Defendant SLDC.

/s/ Carl W. Yates III

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JANET LaMONTAGNE, Plaintiff(s), vs. ST. LOUIS DEVELOPMENT CORP., and CITY OF ST. LOUIS Defendant(s).	)	Case No. 4:98CV00016 GFG

MEMORANDUM AND ORDER

(Filed Aug. 5, 1998)

This matter is before the Court on defendants St. Louis Development Corporation (SLDC) and City of St. Louis' joint motion for judgment on the pleadings.[1]

I. Background

Plaintiff Janet LaMontagne brings this civil rights action pursuant to 42 U.S.C. § 1983. During the period relevant to this action, plaintiff was the Democratic committeewoman for the 14th Ward of the City of St. Louis. At the same time, plaintiff worked at SLDC. Plaintiff claims that during her employment, SLDC "adopted a rule or regulation that provided that its employees could not seek or accept a nomination, election or appointment

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[1] Defendant SLDC filed the instant motion which has since been adopted by defendant City of St. Louis. (Doc. No. 20).

as an officer of a political party." (Complaint at ¶14). She further alleges that the regulation "provided that the Executive Director of Defendant, St. Louis Development Corporation, and three (3) other employees, designated by the Executive Director, could take an active part in partisan political campaigns and politics." *Id.* Plaintiff claims that she was terminated pursuant to this regulation. She brings this action "to remedy the deprivation of rights guaranteed [to her] by the 1st and 14th Amendments of the United States Constitution." (Complaint at ¶4).

II. Discussion

Under Federal Rule of Civil Procedure 12(c), a motion for judgment on the pleadings is not properly granted unless the moving party has clearly established that no material issue of fact remains to be resolved and the party is entitled to judgment as a matter of law. *National Car Rental System, Inc. v. Computer Associates Int'l Inc.*, 991 F.2d 426, 428 (8th Cir. 1993). A complaint should not be dismissed on the pleadings "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45, (1957). In determining whether any material issues of fact remain, the court must accept all facts pled by the non-moving party as true and all reasonable inferences must be construed in favor of the non-moving party. *Westcott v. City of Omaha*, 901 F.2d 1486 (8th Cir. 1990).

The parties have declined to provide the Court with a written copy of SLDC's regulation. Fortunately, that oversight is of no matter here, as the provisions of the regulation as stated in the complaint do not violate plaintiff's constitutional rights.

The Supreme Court has repeatedly held that "the government has an interest in regulating the conduct and 'the speech of its employees that differ[s] significantly from those it possesses in connection with regulation of the speech of the citizenry in general.' " *CSC v. Letter Carriers,* 413 U.S. 548, 564 (1973) (quoting *Pickering v. Board of Education,* 391 U.S. 563, 568 (1968). Here, plaintiff complains she was given a choice between resigning her political office or losing her job. The Supreme Court has consistently held regulations, policies and laws containing similar and even more severe restrictions constitutional. *See, e.g., Letter Carriers,* at 556 (upholding section of Hatch Act precluding federal employees from "[taking] an active part in political management or in political campaigns."); *Broadrick v. Oklahoma,* 413 U.S. 601, 617-18 (1973). *See also Otten v. Schicker,* 655 F.2d 142 (8th Cir. 1981) (upholding a St. Louis Police Department regulation prohibiting employees from running or campaigning for elective public office). Indeed, in *United Pub. Workers v. Mitchell,* 330 U.S. 75 (1947), the Supreme Court rejected the First Amendment claim of a federal worker who, like plaintiff, was terminated due to his position as a ward committeman. Nor does the fact that SLDC's policy contains exceptions for certain positions save plaintiff's claim. *See Clements,* at 972. Because plaintiff's complaint does not state a claim for relief, the Court will grant defendants' motion for judgment on the pleadings.

Accordingly,

IT IS HEREBY ORDERED that defendants' joint motion for judgment on the pleadings (Doc. No. 15) is **GRANTED.**

IT IS FURTHER ORDERED that all other pending motions are **DENIED** as moot.

A separate judgment is entered this same date.

Dated this 5th day of August, 1998.

/s/ Jean C. Hamilton
JEAN C. HAMILTON
UNITED STATES
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JANET LaMONTAGNE, Plaintiff(s), vs. ST. LOUIS DEVELOPMENT CORP., and CITY OF ST. LOUIS Defendant(s).	)	Case No. 4:98CV00016 GFG

JUDGMENT

(Filed Aug. 5, 1998)

Pursuant to the memorandum and order entered herein this same date,

IT IS HEREBY ORDERED, ADJUDGED and **DECREED** that judgment is entered in favor of defendants that plaintiff's complaint is dismissed with prejudice, at plaintiff's costs.

Dated this 5th day of August, 1998.

/s/ Jean C. Hamilton
JEAN C. HAMILTON
UNITED STATES
DISTRICT JUDGE

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 98-3156EMSL

Janet Lamontagne, Appellant, vs. St. Louis Development Corporation, a Missouri Not-For-Profit Corporation; City of St. Louis, a Municipal Corporation, Appellees.	* * * * * * * * * * * *	Order Denying Petition for Rehearing and for Rehearing En Banc

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

(5128-010199)

April 29, 1999

Order Entered at the Direction of the Court:

/s/ Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit

Supreme Court, U.S.
FILED
AUG 13 1999
OFFICE OF THE CLERK

99- 100

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

JANET LAMONTAGNE,
Petitioner,

v.

ST. LOUIS DEVELOPMENT CORPORATION
AND THE CITY OF ST. LOUIS, MISSOURI,
Respondents.

BRIEF IN OPPOSITION TO WRIT OF CERTIORARI OF RESPONDENT THE CITY OF ST. LOUIS

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BRIEF IN OPPOSITION TO WRIT OF CERTIORI OF RESPONDENT CITY OF ST. LOUIS

Respondent The City of St. Louis respectfully requests that this Court deny the petition for writ of certiori seeking review of the Eighth Circuit's decision in this case. That decision is reported at 172 F.3d 555.

STATEMENT OF THE CASE

Petitioner Janet Lamontagne filed the action on January 6, 1998 seeking damages for an alleged violation of her right to political speech and assembly by Respondents The City of St. Louis ("City") and the St. Louis Development Corporation ("SLDC). The SLDC had terminated Lamontagne's employment pursuant to an SLDC rule that no employee could seek or accept an office in any political party, because she declined to resign her position as Democratic Committeewoman for the 14th ward in St. Louis, Missouri.

Prior to July 27, 1988, Lamontagne had been an employee of the City of St. Louis working in the Business Assistance Center. Also, prior to that time, she had held her committeewoman's position. The SLDC was incorporated on July 27, 1988. After that time, Lamontagne's salary was paid through the SLDC. The City asserted in its Motion for Judgment on the Pleadings that Lamontagne was not an employee of the City in that the City exercised no control over Lamontagne, or the SLDC.

After Lamontagne became an employee of the SLDC and before January 1, 1997, the SLDC adopted a rule that provided no SLDC employee could seek or accept *office* in any *political party*. The City previously had, and continues to have, such a rule. Additionally, the SLDC's Executive Director and three (3) additional employees designated by him could engage in *political campaigns*.

On or about October 16, 1997, the SLDC advised Lamontagne that she would be terminated if she did not resign her position as 14th Ward Democratic Committeewoman. She refused to resign and was terminated.

This case was originally assigned to the Honorable George F. Gunn, Jr. in the District Court. Answers were filed by The SLDC and the City. Motions for Judgment on the Pleadings were filed by both Respondents on March 30, 1998. The Honorable Judge Jean C. Hamilton sustained Respondents' Motion for Judgment on the Pleadings and dismissed Petitioner's Complaint on August 5, 1998. On August 13, 1998, Petitioner appealed to the United States Court of Appeals for the Eighth Circuit from the final judgment entered by the United States District Court.

Oral arguments were heard by the United States Court of Appeals on February 12, 1999 and on March 30, 1999, the Panel entered its order affirming the decision of the District Court. On the 12th day of April, 1999, Lamontagne filed a Petition for Rehearing En Banc. On April 29, 1999, the United States Court of Appeals entered an Order denying Petitions for Rehearing and for Rehearing En Banc.

REASONS FOR DENYING THE PETITION

I. The petition should be denied because a long line of cases, including those relied upon by the District Court and the Federal Appeals Court have dealt with the identical facts and issues presented in the instant case and hold that governmental entities may indeed adopt rules precluding their employees from holding office in a political party.

The District Court and the Appeals Court relied on five major decisions which presented identical facts and issues to those in the instant case. In each of these cases, the restriction on political

activity of the government employee was upheld. It is not necessary to revisit this issue.

In *United Public Workers v. Mitchell*, 330 U.S. 75 (1947), a person employed as a roller in a U.S. mint acted outside of working hours as ward committeeman of a political party. His employer, the United States government, believed this violated § 9(a) of the Hatch Act, 18 U.S.C. Supp. V, §61h – which prohibited taking an "active part in political management or in political campaigns" *Mitchell*, 94. The Court held that this could be made the basis for disciplinary action without violating the Constitution. The Court in *Mitchell* considered many of the policy considerations behind the restriction: avoiding political favoritism, improving the efficiency of government, avoiding a tendency toward a one party system, avoiding the creation of political machines. Because the facts in *Mitchell* are so similar to the facts in this case, and because the Court in *Mitchell* considered so many of the governmental interests which could be behind the creation of a rule such as the restriction on political activity by the SLDC – and decided that such restrictions on political activity were constitutional – it is impossible to see how Petitioner's claim could state a cause of action upon which relief could be granted.

In *Broadrick v. Oklahoma*, 413 U.S. 601, (1973), the Supreme Court extended the rule handed down in *Mitchell*. Government restrictions on the political activity of employees extend to state government as well as to the federal government. The Court upheld a section of the Oklahoma state merit system regulations which provided in part that no classified service employee shall belong to "any national, state, or local committee of a political party." *Broadrick*, 607. Again, the Court considered legislative policy considerations behind the rules limiting political activity in a case with striking factual similarity to the one at bar, and concluded that such a restriction was not unconstitutional.

In *CSC v. Letter Carriers*, 413 U.S. 548 (1973), the Court reaffirmed "the *Mitchell* holding that Congress had, and has, the power to prevent . . . holding a party office, working at the polls, and acting as party paymaster for other party workers." *CSC*, 557. The provisions of the Hatch Act, Supra, reviewed in *Mitchell* were again reviewed and held to be constitutional.

In *Otten v. Schicker*, 655 F.2d 142 (8th Cir. 1987), the Court upheld a St. Louis Police Department regulation that prohibited employees from running for elective office, and in so doing, considered the valid and important state interests behind the rule - - attracting qualified persons through guaranteeing job security free from the political arena, and ensuring the impartial execution of the laws. *Otten*, 143 - 144.

In *Clements v. Fashing*, 457 U.S. 957 (1982), the Court considered the government interests behind a Texas Constitutional provision which provided that government officials already holding office could not run for a term in the legislature until after their term in office had expired. This rule was challenged on first amendment and equal protection grounds. The challenge failed. It is important to note that the equal protection challenge in *Clements* did not give rise to "heightened scrutiny" and ultimately failed.

Because these five cases confront squarely the same facts and issues as presented in the instant case, and uphold restrictions identical to that which the SLDC placed upon Petitioner, it follows that the District Court was correct in sustaining Respondents' Motion for Judgment on the Pleadings. As a matter of law, Petitioners Complaint did not state a cause of action upon which relief could be granted, and the decision of the Eighth Circuit Court of Appeals should be affirmed.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiori should be denied.

RESPECTFULLY SUBMITTED,

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